

PETRILLO KLEIN & BOXER LLP

655 Third Avenue
22nd Floor
New York, NY 10017
Telephone: (212) 370-0330
www.pkblp.com

Daniel Goldman
Direct Dial: (212) 370-0336
Cell: (973) 476-5485
dgoldman@pkblp.com

September 14, 2015

BY ECF

Honorable Richard M. Berman
United States District Court
Southern District of New York
United States Courthouse
500 Pearl Street
New York, NY 10007-1312

Re: Barbara Duka v. U.S. Securities and Exchange Commission, 15 Civ. 357 (RMB)

Dear Judge Berman:

With reference to the above-captioned matter and pursuant to the Court's Order dated September 11, 2015, *see* Dkt. No. 68, we respectfully submit this letter on behalf of our client Barbara Duka in response to the SEC's letter to the Court dated September 10, 2015.

1. As set forth in our letter dated September 1, 2015, *see* Dkt. No. 66, the Court's order granting the preliminary injunction should not be stayed. The SEC's contemplated motion, pursuant to Rule 62(c) of the Federal Rules of Civil Procedure, would both lack merit and needlessly waste resources.

2. With respect to further proceedings in this case, because the Court denied the SEC's motion to dismiss the Amended Complaint, *see* Dkt. No. 57, the SEC should now be required to file an Answer. Prior thereto, Plaintiff would intend to dismiss without prejudice Count Five (concerning the Administrative Procedures Act). Thereafter, because there is no need for fact discovery by either party, the pleadings should be converted to motions for summary judgment, and judgment should issue based on the Court's Opinions to date. Moreover, because the SEC is appealing the preliminary injunction based on the Court's ruling under the Appointments Clause, to permit Plaintiff to preserve its appeal, if necessary in the future, of the Court's ruling under *Free Enterprise*, we would respectfully request that the Court stay entry of judgment pending (i) the Court of Appeals' ruling in the instant appeal and (ii) a subsequent conference before the Court.¹

¹ If the Court is inclined to consider the SEC's suggestion that the case before Your Honor be stayed before the Answer is filed, then we would respectfully request that it be stayed for all purposes including the SEC's proposed application under Rule 62(c).

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Respectfully submitted,

/s/ Daniel Goldman

Daniel Goldman

cc: All Counsel (by ECF)